THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28113 of 1997

Dated:07.03.2007

Between
D.Mahalaxmi

.....Petitioner

and

1. Additional Registrar of Coop.
Societies Andhra Pradesh, Hyderabad
And others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28113 of 1997

ORDER:

This writ petition is filed seeking a Certiorari to call for the records from the 1st respondent in Rc.No.46793/97-L1, dated 13.10.1997 confirming the orders of the 2nd respondent in Rc.No.1858/97-A dated 16.7.1997.

The petitioner is a Primary Agricultural Co-operative Society. The services of the 3rd and 4th respondents were terminated by the petitioner-Society by an order dated 6-3-1997 with effect from 7-3-1997 on the ground that the society has incurred huge loss and it is not in a position to continue the services of the 3rd and

4th respondents. At the time of termination, third and fourth respondents were paid one month's notice pay as per law. As per the Bye-Laws of the society and also Special Bye-laws relating to the service conditions of the employees, against the termination order an appeal lies to the District Cooperative Officer. The 3rd and 4th respondents filed an appeal before the 2nd respondent, who in turn, set aside the termination order passed by the Society *vide* order dated 16.7.1997 on the ground that no enquiry was conducted against 3rd and 4th respondents before passing the termination order. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent under Section 77of the A.P. Shops & Establishment Act, 1964
(for short 'the Act'). It was contended by the petitioner before the 1st respondent that the 1st respondent has no jurisdiction to entertain the revision with regard to termination of the

services of the 3rd and 4th respondents since they are covered under the Act and if at all they are aggrieved they should have filed an appeal before the Authority under Section 48 (2) (1) (b) of the Act. It was further contended that the bye-laws of the petitioner-society shall have overriding effect of the Act which is binding. The sum and substance of the case of the petitioner is that against termination order passed by the society, an appeal is available to the Primary authority and also a second appeal available under the Act, neither the 1st respondent nor the 2nd respondent had any authority under the law to entertain the appeal and revision filed by the 3rd and 4th respondents, further confirmation of the same by the 1st respondent is also arbitrary and illegal.

Learned counsel for the petitioner strenuously contended that the 1st and 2nd respondents have no jurisdiction over the

service matters, which are governed by the Act and the first respondent committed an error in setting aside the termination order passed against 3rd and 4th respondent, which is not permissible under the law.

Learned counsel appearing for the 1st and 2nd respondents supported the orders passed by the District Cooperative Officer as well as the revisional authority and stated that since no enquiry as required under bye-law 12 (2) of the Special bye-laws was conducted before terminating the services of the 3rd and 4th respondents, the same is arbitrary and illegal and both the authorities have rightly construed that the procedure as required under the law was not followed, therefore, termination of the services of the 3rd and 4th respondent was arbitrary and illegal. Hence, no ground is made out to interfere with such an order passed by the respondents.

I have given my earnest consideration to

the respective submissions made by the learned counsel on either side and perused the impugned order and other material available on record.

When the special bye-laws governing the service conditions of the employees of the petitioner society are available, the petitioner-society cannot apply the general law of the Act in respect of service matters of the employees and thus deprive them of their legitimate right to continue in the service of the society without following the due procedure of law as laid down in the Special Bye-laws. The action of the petitioner society is also hit by the principles of natural justice as the services of the

3rd and 4th respondents have been terminated without fair and proper enquiry as required under the special bye-laws governing the service conditions of the petitioner society. Bye-law 12 (2) of the Special Byelaws requires an enquiry to be conducted by following the

principles of natural justice. But, such a course of action was not adopted by the petitioner-society. Therefore, the 2nd respondent has rightly set aside the termination order, which was confirmed by the 1st respondent, the same cannot be said to be either arbitrary or illegal. Therefore, the writ petition is liable to be dismissed.

Writ petition is accordingly dismissed. No costs.

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07-03-2007

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